

**Laborers International Union of North America,
Local Union No. 576, AFL-CIO (Arthur B.
Myr Sheet Metal Ind., Inc.) and Kenneth E.
Goode. Case 9-CB-5148**

26 August 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

On 15 December 1982 Administrative Law Judge Elbert D. Gadsden issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a reply brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order, as modified herein.³

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Administrative Law Judge made several errors in his Decision which we hereby correct. Throughout his Decision, and particularly in his statement of "Jurisdiction" and "Background Facts," the Administrative Law Judge erroneously referred to the Employer as "the Respondent." In discussing the Employer's labor complement, the Administrative Law Judge incorrectly refers to an employee as "John Keller"; the correct name is "Kelly." In the "Analysis and Conclusions" section of his Decision, the Administrative Law Judge stated that "surprisingly, Goode said 'yes!';" the Administrative Law Judge meant to refer to Hampton as the speaker. In the same section of the Decision, the case of *NLRB v. Jarka Corp.*, 198 F.2d 618 (3d Cir. 1952) is quoted, *inter alia*, as follows: "This relationship of cause and effect" The correct quotation is "cause and effect."

² In agreeing with the Administrative Law Judge that Respondent violated the Act, we do not rely on his unnecessary characterization that the Employer's job superintendent would have had to have been "mentally retarded" if he did not understand Respondent's request to lay off the Charging Party. In addition, we do not rely entirely on the Administrative Law Judge's discussion of overtime work at the Employer's jobsite. The issue was not explored in depth at the hearing, but the record indicates that laborers worked overtime hours both before and after the Charging Party's layoff. However, the Administrative Law Judge's findings and conclusions, and the record as a whole, support the conclusion that Respondent violated the Act by seeking and causing the layoff of the Charging Party.

³ In *Sheet Metal Workers Local 355 (Zinsco Electrical Products)*, 254 NLRB 773 (1981), the Board reversed its policy with respect to remedies for unlawful discharge where the union is solely culpable for the act. In addition to requiring the union to notify the employer and the employee that it no longer objected to the employee's reinstatement with the employer, the Board also required the union affirmatively to request such reinstatement, and to make the employee whole for all loss of wages and benefits suffered by reason of the discrimination until the employee is reinstated by the employer to the same or substantially equivalent job, or

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Laborers International Union of North America, Local Union No. 576, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing, or attempting to cause, Arthur B. Myr Sheet Metal Ind., Inc., to discriminate against Kenneth E. Goode or any other employee, because such employee is not a member of the Union, as protected by the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the purpose of the Act:

(a) Make Kenneth E. Goode whole for any loss of wages and benefits suffered by reason of the discrimination against him from the date of his layoff to the date of his reinstatement by Arthur B. Myr Sheet Metal Ind., Inc., to his former or substantially equivalent job or to the date he secures substantially equivalent employment with some other employer, less net earnings during this period, in the manner set forth in "The Remedy" section of this Decision.

(b) Notify Kenneth E. Goode and Arthur B. Myr Sheet Metal Ind., Inc., in writing, that it has no objection to Goode's employment by Arthur B. Myr Sheet Metal Ind., Inc., and request that Arthur B. Myr Sheet Metal Ind., Inc., rehire Goode.

obtained similar employment elsewhere. The Administrative Law Judge did not provide for the entire scope of this remedy and we shall amend his recommended remedy and order in accordance with this precedent. Additionally, we shall require Respondent to request the Employer to post the notice, if it is willing, in all places where such notices are customarily posted. Further, the Board recently decided that employers should be ordered to expunge from records any references to unlawful discharges of discriminatees, and to notify them in writing that this has been done and that evidence of the unlawful discharge will not be used as a basis for future personnel action. See *Sterling Sugars*, 261 NLRB 472 (1982). To the extent that a union, when operating a hiring hall or in the course of its functions, maintains its own records, we believe the same remedy should apply. Accordingly, we shall order Respondent to expunge from its records reference to the incident involved herein. Finally, we shall modify the injunctive language to conform to the statute and require that Respondent cease and desist from "restraining and coercing" employees in the exercise of their statutory rights. In concluding that a narrow injunctive order is proper here, we rely on *Hickmott Foods*, 242 NLRB 1357 (1979).

(c) Expunge from its files any references to the layoff of Kenneth E. Goode, and notify him in writing that this has been done and that the incident involving the unlawful layoff will not be used as a basis for future actions against him.

(d) Post at its office and other places where it customarily posts notices to members, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 9, shall, after being duly signed by an authorized representative of Respondent Union, be posted immediately upon receipt thereof in the manner provided above. Notices are to be posted for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Union to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Forward signed copies of said notice to the Regional Director for Region 9, for posting by Arthur B. Myr Sheet Metal Ind., Inc., if willing, at all locations where notices to employees are customarily posted.

(f) Request Arthur B. Myr Sheet Metal Ind., Inc., to expunge from its files any references to the layoff and to notify Kenneth E. Goode in writing that this has been done and that evidence of the unlawful layoff will not be used as a basis for future personnel action against him, if it is willing.

(g) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT cause, or attempt to cause, Arthur B. Myr Sheet Metal Ind., Inc., to discriminate against Kenneth E. Goode or any other employee, because such employee is not a member of the Union as protected by the National Labor Relations Act.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act, except to the extent that such rights may

be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

WE WILL make Kenneth E. Goode whole for any loss of wages and benefits suffered by reason of the discrimination against him from the date of his layoff to the date of his reinstatement by Arthur B. Myr Sheet Metal Ind., Inc., to his former or substantially equivalent job or to the date that he secures substantially equivalent employment with some other employer, with interest thereon.

WE WILL notify Kenneth E. Goode and Arthur B. Myr Sheet Metal Ind., Inc., in writing, that we have no objection to Goode's employment by Arthur B. Myr Sheet Metal Ind., Inc., and WE WILL request that Arthur B. Myr Sheet Metal Ind., Inc., rehire Goode.

WE WILL expunge from our files any reference to the layoff of Kenneth E. Goode, and WE WILL notify him in writing that this has been done and that the incident involving the unlawful layoff will not be used as a basis for future actions against him.

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL UNION
No. 576, AFL-CIO

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSEN, Administrative Law Judge: Upon amended unfair labor practice charges filed on December 31, 1981, by Kenneth E. Goode, an individual, herein sometimes called the Charging Party, against Laborers International Union of North America, Local Union No. 576, AFL-CIO, herein called the Union, a complaint was issued by the Regional Director for Region 9 on behalf of the General Counsel on January 29, 1982.

In substance the complaint alleges that the Respondent-Union caused the Employers Arthur B. Myr Sheet Metal Ind., Inc., to discriminate against an employee in violation of Section 8(a)(3) of the Act, and, by doing so, Respondent violated Section 8(b)(2) of the Act.

In its answer to the complaint filed on February 5, 1982, the Respondent denied that it has engaged in any unfair labor practices as alleged in the complaint.

The hearing in the above matter was held before me in Louisville, Kentucky, on October 14, 1982. Briefs have been received from counsel for the General Counsel and counsel for the Respondent, respectively, which have been carefully considered.

Upon the entire record in this case and from my observation of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. JURISDICTION

Arthur B. Myr Sheet Metal Ind., Inc., the Respondent herein, is, and has been at all times material herein, a Michigan corporation, with an office and place of business in Dearborn, Michigan, where it has been engaged in the manufacture and nonretail sale of Industrial sheet metal and related products.

During the past 12 months, a representative period, the Respondent in the course and conduct of its business operations, sold and shipped from its Dearborn, Michigan, facility, products, goods, and materials valued in excess of \$50,000 directly to points located outside the State of Michigan.

The complaint alleges, the Respondent admits, and I find that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Laborers International Union of North America, Local Union No. 576, AFL-CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

The Respondent, a Michigan corporation with an office and place of business in Dearborn, Michigan, is engaged in the manufacture and nonretail sale of industrial sheet metal and related products. The nature and location of the job in the instant case involved renovation of the Ford Motor Company plant located in Louisville, Kentucky. Employer Arthur B. Myr Sheet Metal Ind., Inc., was one of many employers on the job which commenced in September 1981, and lasted through January 1982. Richard A. Goode, Sr., a member of Local 110, was employed by the Employer as a sheet metal journeyman on October 8, 1981. Shortly thereafter Richard Goode, Sr., asked General Foreman Jim Sisson if he would be hiring any laborers, and, if so, would he hire his son, Kenneth Goode. Sisson said he expected to hire laborers and in that eventuality he would hire his son. Subsequently, the employer (Superintendent Phillip Craig McCoy) hired a member of the Union, Dan (Danny) Mason as a laborer on November 3, 1981. Mason worked until January 16, 1982. Sisson told Richard Goode, Sr., to have his son come in and as a result thereof, Kenneth Goode, 19 years of age and not a member of the Union, came to the job the next day and was hired as a laborer on November 4, 1981.

Subsequently, the Employer hired and laid off the four additional laborers as follows:

	<i>Hired</i>	<i>Laid Off</i>
Carol Sue Rowe	Nov. 10, 1981	Jan. 16, 1982
John Keller	Nov. 9, 1981	Nov. 14, 1981
Michael Markwell	Nov. 9, 1981	Dec. 11, 1981
Everett Hutcheson	Nov. 18, 1981	Dec. 11, 1981

Everett Hutcheson, John Keller, and Michael Markwell signed cards authorizing dues checkoff by the Employer.

Kenneth E. Goode worked with union steward and laborer Dan Mason for the first half hour of work on November 4. During that time Mason informed him of the procedure for applying for membership, that "I would work until I got my first full paycheck and then take \$100 to the Union and they would give me a receipt showing that I gave them \$100." Richard Goode, Sr., testified that Union Steward Mason advised him of the same procedure for Kenneth Goode to effectuate membership in the Union. At this time Mason and Kenneth Goode were the only two laborers working for the Employer. *Grover Clay Hampton*, president of Local 576, first talked with Superintendent McCoy when the latter called him on November 9 and asked him to refer two laborers for work. Hampton immediately referred Keller and Markwell to McCoy. On the next day, November 10, Hampton visited McCoy on the job and gave him a copy of the union contract.

In this regard, the Employer's job superintendent, *Phillip Craig McCoy*, testified that about 2 weeks after he hired Kenneth Goode, Union President Clay Hampton came on the project and introduced himself to Superintendent McCoy, and said "If you need laborers then we need a contract from your company with us." Hampton then gave McCoy a copy of the union contract (G.C. Exh. 2(a) and (b)) and asked him to have his company sign it. He signed the agreement at that time on November 10. Hampton then told him "If and when you need laborers, call me."

On November 17, after laborers Markwell, Rowe, and Hutcheson were employed, Kenneth Goode testified that a Black man approached him and asked him if he had a union card and he replied "No," but he explained how he was going to get one. The man responded in an angry and argumentative manner that he (Goode) would have to go through the Union. Kenneth Goode said he walked away but later saw the man talking to other workers in an angry and argumentative manner. Thereupon, Dan Mason approached and commenced talking with the man and Goode overheard them talking about him (Goode). He overheard the man tell Mason he was going down to the Union and raise Cain, and Mason told him to go ahead and do that because he could not do anything about it. As he and Mason walked away, Mason told Goode he should get his \$100 to the Union as soon as possible. Goode went to his father, Richard Goode, and told him about the incident. His father told him he would try to obtain an advance from the Company. Later that same day, his father told him Superintendent McCoy said it was okay because he had talked to the Union's business agent. Richard Goode Sr., corroborated Kenneth Goode's testimony in this regard.

Kenneth Goode received his first full paycheck in the late afternoon on November 19. On the next morning, November 20, Goode obtained permission from General Foreman Sisson to leave the job to cash his check and stop to the union office to pay his dues. When he went to the union office at 1 o'clock that day, no one was there to help him, but with permission he went to the union office again at 3 o'clock and told Union Representative Jimmy Stewart that he would like to join the Union, while holding a \$100 bill in his hand. Stewart hollered over to Union President Clay Hampton, to whom he referred Goode, and Goode's testimony continued as follows:

A. Okay. He said, "Can I help you?" I said, "Yes, I'd like to join the union." He said, "Do you have a job?" And I said, "Yes." And he said, "Where at?" I said "Ford Motor Company." And he said he just—he couldn't let me in the union. And I said, "Why?" And he said "cause he had 300 men on the bench and that I had their job. And then I asked him, "Well then, how do the other men go about—how do the other men go about getting into the union?" And he talked around it, saying that he just couldn't let me in. Then he asked me my name and the company I worked for and where at, wrote it down on the paper. He said he would send a man out there tomorrow. He said "Go ahead and work the day out tomorrow."

Q. He said what?

A. He said, "Work the day out today and tomorrow." Then that would be it. I said, "Does that mean I'm being laid off?" And he said, "Yes." And I said, "Well, thanks for nothing." And then I left and went back to work.

Q. What did you do with the \$100 bill?

A. I put it back in my pocket.

When Goode returned to the job, he informed Foreman Sisson what had happened and Sisson told him not to worry about it because he had a lot of people pulling for him. Goode worked the remainder of the day, Friday, November 20, and reported to work on the next day, Saturday, November 21. He worked from 7 a.m. until the first break at 9 a.m. and asked Foreman Sisson if he had heard from the business agent for the Union. Sisson said yes, he is talking to Superintendent McCoy at this time. Goode returned to work and when he went into the cafeteria at lunchtime, 11:30 a.m., Foreman Sisson stated "We have to lay you off." He asked Sisson was there a reason, and he replied, "We just have to lay you off." Goode informed Mason about the layoff and according to the testimony of his father, Richard Goode, who testified without dispute that his son Kenneth had also advised him of the layoff. Kenneth Goode returned to work until about 2 o'clock. He requested racking time from Foreman Sisson who granted such permission. Thereafter he left the jobsite.

Richard Goode, Sr., thereafter, asked Foreman Sisson what was the status of his son's employment, and Sisson told him that he "had to let him go because he did not want any trouble with the Union." Goode asked why,

and Sisson said the union business agent for laborers came out today and advised him that he had to let Kenneth Goode go. Sisson also said it was a tough break for the kid and he (Kenneth Goode) ought to take it to the National Labor Relations Board to try to rectify the situation. Foreman Sisson did not appear and testify in this proceeding and Richard Goode's testimony is undisputed and credited by me.

Richard Goode, further testified that after November 21 he observed laborers working the same overtime the sheet metallists worked, 10 hours a day and 8 hours on Saturday. His testimony was partially corroborated by the Employer's witnesses who agreed that the following laborers worked 2 hours per day overtime until they were laid off as follows: Carol Sue Rowe, January 16, 1982; Michael Markwell, December 11, 1981; Ernest Hutcheson, December 11, 1981; and Dan Mason, January 16, 1982.

About \$7 in dues was deducted from Kenneth Goode's paychecks on two occasions but the total amount was returned to him after he filed an amended charge with the National Labor Relations Board on December 31, 1981.

McCoy testified that on November 20, President Hampton came to him and said it had come to his attention that McCoy had someone (Kenneth Goode) employed that was not a member of laborer's temple here in the city; that there are a lot of members out of work, and that he (Hampton) has a tough time explaining that sort of situation to his membership. Hampton also told him he could not tell me (McCoy) to get rid of him (the non-union worker) or force me to get rid of him, but he just wanted to let me know the general feeling of his membership.

McCoy testified that he responded to President Hampton as follows:

I said that, well, "I need to cut down in—in the labor—labor force anyway—and that when I do, I would take into consideration a non-union member being on the job would be laid off first."

About 3 days later he told Kenneth Goode since he was not a member of the local, it was tough to explain why he was working when members of the local were not, and he decided to lay him off. Superintendent McCoy further testified as follows:

Q. And, is that what you told Kenneth, that you were laying him off because he wasn't a member of the union?

A. No. I told him that I needed a reduction in the laborers that I had on the job. However, there was—there was a system like—that I'm going to have to go by at the particular time—and that was that he was not a union member.

McCoy acknowledged that he did not believe he had laid off anyone else at the time although the payroll or personnel records of the Company shows that John Keller was laid off on November 14, 1981, prior to the layoff of Kenneth Goode. McCoy also acknowledged that Richard Goode, Sr., approached him on or about

November 17 and requested an advance of \$50 or \$100, but he stated he did not recall whether Richard Goode, Sr., gave him a reason. He thereupon wrote a payroll check to Richard Goode, Sr. McCoy also acknowledged that he told a Board agent that Richard Goode, Sr., asked him for a layoff slip stating that Kenneth Goode was laid off by request of the Union, but he declined to give such statement. He thereafter stated that Kenneth Goode was laid off for lack of work. On cross-examination, McCoy first said he terminated laborer Keller for a poor attitude (using foul language and indecent exposure towards a female laborer) but then changed his testimony to say Keller was laid off for lack of work.¹

Vice president of the Employer, Hugh Marshke, testified that he received a union contract on November 9, 1981, but did not sign it. He also testified that he recalled his job superintendent, McCoy, telling him the president of the Union, Clay Hampton, came to the job and told McCoy the man was not a member of the Union; that he would have to join the Union or be laid off. He added that they were contemplating laying off. He stated that McCoy told him that Kenneth Goode was being laid off but he did not tell him the reason. And finally he acknowledged on cross-examination that he told McCoy to lay off Kenneth Goode "*so we wouldn't have any further complications on the job.*" When asked what he meant by complications, he said "*union members of the laborers foreseeing a nonunion member working—this kind of situation.*"

When Hampton was asked why did he not allow Kenneth Goode to join the Union, Hampton testified as follows:

Because I was confused as to why that an apprentice sheet metal worker would be sent to my union hall to join the Laborers' Union, and I would like verification whether he was actually a laborer or whether he was an apprentice sheet metal worker.

On the way into the building I told Mr. McCoy—I said, "There was a young man in my office yesterday evening that told me that he had been working out here as a laborer by the name of Kenneth Goode." And he said, "Yeah." He said, "I hired him as a favor to a sheet metal worker." And I told him—I said, "Well, you know, we've got a lot of people out of work, and if you need any more people I'd appreciate that you call my union hall for them." He said—his response to me was, "I'm caught up. I won't be calling you for any more people. In fact, I'm going to be laying people off and I'm going to lay Mr. Goode off."

Hampton also testified that he approached Kenneth Goode on the jobsite and inquired whether he was a laborer because he did not recognize him as one of his union membership. However, Kenneth Goode emphati-

cally denied that Hampton ever approached him on the jobsite or that he had ever seen Hampton before he visited the union office. He also emphatically denied that he was wearing the clothing described by Hampton, the likes of which he said he had never worn to work, and he proceeded to describe the different clothing he did wear to work.²

Analysis and Conclusions

The precise question presented for determination in this proceeding is:

Did the Union attempt to cause, or in fact caused, Employer Myr Sheet Metal Company to layoff or discharge Kenneth Goode, either because he was hired while he was not a member of the Union and other union members were on layoff, or for reasons unrelated to any legitimate consideration of the Union, such as Goode's failure to pay initiation fees or dues?

The credited testimonial evidence of record is essentially free of conflict and the subordinate question presented for resolution calls largely for a determination as to whether the union or the employer witnesses were telling the truth, as opposed to the accounts of the Charging Party and his father, Richard Goode, Sr.

It is well established that a union violates Section 8(b)(2) of the Act by attempting to cause, or in fact causing, an employer to discriminate against an employee for reasons other than an employer's failure to pay dues and initiation fees. The union must establish that its actions in attempting to cause or in fact causing an employer to discriminate against an employee, were necessary to effectuate performance of its functions in representing employees. *Operating Engineers Local 18 (Ohio Construction Assn.)*, 204 NLRB 681 (1973). However, an examination of the record evidence herein readily reveals that Kenneth Goode applied for and tried to tender a \$100 payment for his initiation fees and/or dues to the Union on November 19, but Union President Clay Hampton refused to accept it, telling Goode he (Hampton) could not accept his membership because the Union had 300 members on layoff and Goode had one of their jobs. It is therefore clear that for whatever reasons for which Kenneth Goode was laid off by the Respondent, it was not for his failure to pay initiation fees and/or dues.

The evidence shows by Hampton's rejection of Goode's offer or tender of initiation fees or dues, and his claim that Goode's job belonged to the membership, was a clear manifestation by the Union that the Union did not want Goode in Myr's employ. However, the Union went beyond refusing Goode membership, and expressed its disapproval of his employment when Hampton told Goode he could work the remainder of the day (November 19) and tomorrow (November 20). The latter statement by Hampton so strongly implied that the Union

¹ I credit McCoy's first stated reason for discharging Keller because I was persuaded by the circumstances of the witness and the fact that the evidence clearly demonstrates there was no lack of work since the employer hired laborer Hutcheson after it discharged Keller. Moreover, I received the distinct impression that McCoy changed his testimony to try to have his version coincide with the Employer's latently stated reason for laying off Kenneth Goode.

² I credit Goode's denial that Hampton approached and spoke to him on the job, and I discredit Hampton's version of his involvement in Goode's termination because it is inconsistent with all of the credited and circumstantial evidence of record.

was either the Employer, or that it could exert influence with the Employer so as to affect Goode's employment, that Goode undeniably asked Hampton "does that mean I am being laid off?" Suprisingly, Goode said "Yes."³

The record evidence further shows that Hampton kept his word to Kenneth Goode by going to the Employer's job superintendent the very next morning (November 20), and after informing him that Goode was not a member of the Union and there were a lot of union members out of work; that the Union had a tough time explaining Goode's employment to its members, Hampton clearly implied that the Employer should lay off Goode. If the job superintendent did not understand Hampton's not too subtle request to lay off Goode, he would have had to been mentally retarded. It is quite evident from the testimony of Superintendent McCoy that he clearly understood Hampton's implied request, when he said he considered the fact that Goode was not a member of the Union in deciding to lay him off. As the Board has found in *International Packings Corp.*, 221 NLRB 497, 484 (1975), cited by counsel for the General Counsel, a union need not make an express demand that the Employer take discriminatory action against an employee in order for the conduct of the Union to constitute a violation of Section 8(b)(2) of the Act. As the Board approved in *International Packings Corp. supra*, "... a discharge may be caused by less than an expressed demand. It may be caused by conduct which from the circumstances of the case can only be construed as intended to cause a discharge." Certainly this was the case here where the Union's conduct was unquestionably calculated to bring about that result, the discharge of Kenneth Goode. *Local 454, United Food and Commercial Workers (Central Soya of Athens)*, 245 NLRB 1295, 1297 (1979). Additionally, as the court enunciated in *NLRB v. Jarka Corp.*, 198 F.2d 618, 621 (3rd Cir. 1952): "This relationship of cause and defect, the essential feature of Section 8(b)(2), can exist as well when the inducing communication is in terms courteous or even precatory as where it is rude and demanding."

Although the termination slip issued to Kenneth Goode characterized his separation from Myr Sheet Metal as a layoff, the record evidence clearly established that all involuntary separations from the Company are so characterized by the Company. However, the Employer's contention that it laid off Kenneth Goode for lack of work is not substantiated by the evidence. Rather, to the contrary, the evidence shows that although Goode was the second laborer hired by the Company on November 4, 1981, the Employer hired four other laborers, and only one of said laborers (Keller) was laid off before Goode. Nevertheless, Keller was laid off for cause. Two of the four remaining laborers, Markwell and Hutcheson continued to work overtime until December 11, 1981, and the two remaining laborers, Mason and Rowe, continued to work overtime until January 16, 1982. Hence, it is clear by such evidence that there was no lack of work

on November 21 when the Employer laid off Goode in response to the instigation by the Union. Consequently, I find that the Company and the Union's contention that the Company laid off Goode for lack of work was a mere pretext to conceal the Union's discriminatory conduct in attempting and in fact bringing about Goode's discharge. Under these circumstances, I further find that the Union's discriminatory conduct in causing the Employer to terminate Goode was motivated by the Union's displeasure with Goode being employed as a nonunion worker, while many union members were unemployed. Such conduct on the part of the Union clearly constituted a violation of Section 8(b)(2) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in close connection with its operations as described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in an unfair labor practice within the meaning of Section 8(b)(2) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It having been found that the Respondent-Union attempted and actually caused the Employer, Arthur B. Myr Sheet Metal Ind., Inc., to discriminate against employee Kenneth Goode because he was a nonunion member, in its employ, or for reasons other than Goode's failure to pay dues and initiation fees, in violation of Section 8(b)(2) of the Act, the recommended Order will provide that the Respondent cease and desist from engaging in such conduct, and that it make Kenneth E. Goode whole for any losses suffered by him as a result of the Respondent's unlawful conduct with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).⁴ Except as specifically modified by the wording of such recommended Order.

Because of the character of the unfair labor practice herein found, the recommended Order will provide that the Respondent cease and desist from in any like or related manner interfering with, restraining, and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. *NLRB v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

Upon the basis of the above findings of fact and upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Arthur B. Myr Sheet Metal Ind., Inc., herein called the Employer, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

³ I credit Goode's testimony of his conversation with Hampton because Hampton did not convincingly deny the conversation, and I was persuaded by the demeanor of Goode and Hampton, that Goode was telling the truth. Moreover, other credited testimony and circumstantial evidence of record supports Goode's account of the conversation.

⁴ See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

2. Laborers International Union of North America, Local Union No. 576, AFL-CIO, herein called the Union, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By restraining and coercing employees in the exercise of rights guaranteed under Section 7 of the Act by

causing, or attempting to cause, Arthur B. Myr Sheet Metal Ind., Inc., to terminate employee of Kenneth E. Goode because he was not a member of the Union, the Respondent-Union has violated Section 8(b)(2) of the Act.

[Recommended Order omitted from publication.]